Petition

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81-648

No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM 1981

ROBERT AMAAN and NELSON MOSES,

Petitioners

v.

THE CITY OF EUREKA, MISSOURI, and WILLIAM WEBER, MAYOR OF THE CITY OF EUREKA, and FRED SMITH, JOAN ROMERO, THURMAN DEAN, GORDON NIEHOFF, EDWARD RANKIN, and KENNETH KLINE, MEMBERS OF THE BOARD OF ALDERMEN OF THE CITY OF EUREKA, MISSOURI,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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QUESTION PRESENTED FOR REVIEW

The question presented for review in this case is whether Section 79.240 of the Revised Statutes of Missouri is unconstitutional, because the said section arbitrarily and unreasonably denies procedural protections to the Petitioners in the form of a pre-termination hearing when such procedural protections are provided by law for other police officers in the same class as Petitioners.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Robert Amaan and Nelson Moses, by their attorneys, respectfully pray that a writ of certiorari issues to review the decision of the Missouri Supreme Court filed on April 6, 1981.

OPINIONS BELOW

The order of the Circuit Court of St. Louis County, Missouri, Division 4, granting the petition for declaratory judgment and injunction of the petitioners herein, dated March 9, 1979 is printed in Appendix A at A-1, *infra*, and is not officially reported. The opinion of the Supreme Court of the State of Missouri, reversing the order of the trial court, dated April 6, 1981 is printed in Appendix B at pages B1 - B . . , *infra*, and is reported at 615 S.W.2d 414 (Mo. 1981). The order denying the motion for rehearing by the Supreme Court of the State of Missouri, dated June 8, 1981, is printed in Appendix C at page C-1, infra, and is reported at 615 S.W.2d 414 (Mo. 1981).

JURISDICTION

The jurisdiction of this Court is invoked to review the judgment of the Missouri Supreme Court in *Amaan v. City of Eureka*, supra, entered on April 6, 1981; re-hearing denied June 8, 1981. A Petition for Writ of Certiorari is being sought pursuant to 28 U.S.C. 1157(2) which permits review of judgments from a state supreme court in a civil case involving the constitutionality of a statute.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision relied on by the Petitioners and which this case involves is the language in Article XIV of the United States Constitution which reads: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws".

STATUTES INVOLVED

The statutory provisions which this case involves are Section 79.240 of the Revised Statutes of Missouri which reads in pertinent part as follows:

> . . . the mayor may, with the consent of a majority of all the members elected the board of aldermen, remove from office any appointive officer of the city at will, and any such appointive officer may be so removed by a two-thirds vote of all the members elected the board of aldermen, independently of the mayor's approval or recommendation. The board of aldermen may pass ordinances regulating the manner of impeachments and removals.

and also Section 66.250 of the Revised Statutes of Missouri which reads in petinent part as follows:

> Any person appointed after September 28, 1971, to serve as a police officer in any police department in any county of the first class having a charter form of government shall, if he has not heretofore completed the training required by this subsection, within six months from the date of the appointment, cause to be filed with the prosecuting attorney of the county proof that he has satisfactorily completed a law enforcement officer training course conducted by the Federal Bureau of Investigation National Academy or the Southern Police Institute of

Louisville, Kentucky, or a training course with a minimum of six hundred hours of instruction conducted by the county police department alone or in cooperation with any municipal police department authorized by law to operate police training courses, the state highway patrol, or any accredited course for police officers approved by such county police department; provided that any person who has successfully completed a basic police recruit training course conducted by the St. Louis County and Municipal Police Training Academy, the City of St. Louis Police Academy or the Kansas City Police Academy, or who has eight continuous years' of service and experience as a full-time police officer, shall have fulfilled the requirements of this law.

STATEMENT OF THE CASE

The material facts upon which the question presented to the Court is based are as follows:

On October 17, 1978, the Petitioners were dismissed from their jobs as police officers by the Respondent City acting through its mayor and board of aldermen without cause and without a pretermination hearing, pursuant to the statutory authority of Section 79.240 R.S.Mo. In order to be hired as police officers by the Respondent City, the Petitioners were required to comply with Section 66.250 R.S.Mo. which requires that police officers within a first-class county with a charter form of government (specifically St. Louis County) have six hundred hours of accredited training or be a graduate of the St. Louis Metropolitan Police Academy or the St. Louis County and Municipal Police Training Academy or have eight continuous years as service as a full-time police officer. Both Petitioners had complied with the requirements of Section 66.250 R.S.Mo. and were graduates of the St. Louis Metropolitan Police Academy. Both Petitioners requested a hearing before their dismissal was final, and those requests were denied.

Following their dismissal, the Petitioners filed a petition in the Circuit Court of St. Louis County on the 13th day of November, 1978, being Cause Number 415810, wherein Robert Amaan and Nelson Moses were plaintiffs and the City of Eureka, William F. Weber, Fred Smith, Joan Romero, Thurman Dean, Gordon Niehoff, Edward Rankin, and Kenneth Kline were defendants. The petition was in two counts and requested in Count I that the Court examine Section 79.240 of the Revised Statutes of Missouri and declare the statute unconstitutional because it denied the plaintiffs the equal protection of the law, because it did not afford them a pre-termination hearing. Such a pre-termination hearing is

mandated by law for other police officers in St. Louis County if they are employed by the City of St. Louis, the County of St. Louis, a third-class city, or a city with a charter form of government. Only police officers employed in a fourth-class city or a village may be dismissed at will without a hearing.

In Count II, Petitioners requested that the Court enjoin the defendants from enforcing their decisions to dismiss the plaintiffs.

An Order to Show Cause was issued by Judge Herbert Lasky of the St. Louis County Circuit Court on the 13th day of November, 1978. The case was heard on a stipulated set of facts and upon memoranda filed by the respective counsel.

On March 9, 1979, the trial court issued its determination in this matter and entered judgment in favor of the plaintiffs, Petitioners herein, by finding that Section 79.240 of the Revised Statutes of the State of Missouri unreasonably and arbitrarily denied plaintiffs, Petitioners herein, the procedural protection granted to other police officers in St. Louis County and therefore denied them equal judgment that the enforcement of the statute in question, Section 79.240 would be permanently enjoined, and the plaintiffs, Petitioners herein, must be afforded an appeal hearing on any disciplinary or dismissal action.

On April 2, 1979, a notice of appeal was filed by the defendants, Respondents herein. The appeal was taken directly to the Missouri Supreme Court due to the constitutional question presented, and that Court took briefs and held oral argument and issued its judgment on April 6, 1981. That decision reversed the decision of the trial court in all respects.

The Missouri Supreme Court held that:

> In Missouri the rule is well established 'that in the absence of a contract for employment for a definite term or a contrary statutory provision, an employer may discharge an employee at any time, without cause or reason, or for any reason, and in such cases no action can be obtained for wrongful discharge.' *Christy v. Petrus,* 295 S.D.2d 122, 124 (Mo. banc 1956); *Cooper v. City of Creve Coeur,* 557 S.W.2d 717, 720 (Mo. App. 1977), *Amaan* supra at 415.

In reaching its decision on the claim that Section 79.240 violates the equal protection clause, the Court stated at 416:

> Respondents' equal protection claim is premised on §66.250 which requires persons employed as police officers in any police department (city of Eureka) within first-class counties having a charter form of government (St. Louis County and Jackson County) after September 28, 1971, to have received certain training. Persons employed as policemen in any other class county are not required to comply with §66.250. Respondents argue that, because §66.250 imposes training requirements only as to officers in first-class counties having a charter form of government, the officers within that class of county constitute a class separate from police officers employed by fourth-class cities in other counties and are entitled to the same protection against dismissal as is afforded officers of certain statutory classes of cities in Missouri and in St. Louis County. In short, respondents argue that because they are required by law (§66.250) to undergo certain training as a result of their employment as policemen by a St. Louis County municipality they are entitled to a pre-discharge hearing.
>
> It is argued that all police officers in fourth-class cities receive the same treatment under Chapter 79 throughout the state. The requirement that officers employed within

first-class counties must undergo certain training does not nullify the laws relative to the employment and discharge of officers in fourth-class cities simply because the city happens to be in a first-class county. A fortiori-if the General Assembly repeals §66.250 then police officers in fourth-class cities in St. Louis County would not be entitled to a discharge hearing. There is no significant relationship between the powers of a fourth-class city state-wide and the qualifications for police officer service within St. Louis County. To sustain respondents' position would create inequality as between the class of municipalities designated fourth-class cities and their employees throughout the state.

Additionally there is no case or authority cited supporting a requirement for a hearing where the reason for layoff is lack of funds and the reason is accepted as true. In either event, there is no equal protection violation here.

On April 15, 1981, counsel for the petitioners filed a timely motion for rehearing before the Missouri Supreme Court and suggestions in support of that motion. The motion for rehearing was requested due to material mistakes of fact which were contained in the Court's opinion regarding the reason for the dismissal of the plaintiffs, and further, because the Court had misinterpreted a material matter of law as to the question of equal protection. The Missouri Supreme Court erroneously held that the stipulation of facts in this case accepted as true the reason given to Petitioners for their termination (financial cutbacks). The stipulation of record simply stated

> "On October 17, 1978, the plaintiffs Petitioners herein were dismissed by the defendant Mayor and Board of Aldermen without cause pursuant to §79.240 R.S.Mo." (Trial Record 12)

Petitioners urged the Court to correct its erroneous statement of the facts. Further, the Court held that there was "no signifi-

cant relationship between the powers of a fourth-class city statewide and the qualifications for police officers service within St. Louis County". *Amaan*, supra at 416. Petitioners urged the Court to reconsider this in light of the substantial burden placed on fourth-class city officers by the trtaining statute.

On June 8, 1981, the Missouri Supreme Court denied the motion for rehearing without opinion.

ARGUMENT

Petitioners urge the Court to grant a Writ of Certiorari in this case, specifically for these reasons:

a. The question of whether or not Section 79.240 R.S.Mo. is unconstitutional and denies the Petitioners equal protection of the law by denying to them a pre-termination hearing as is granted to other police officers similarly situated and other police officers in the same class as the plaintiffs is an important federal question regarding the interpretation of the equal protection clause of the Fourteenth Amendment which has not been, but should be, settled by this Court; and further, it is a question of general interest regarding the employment rights of public employees who on the one hand are required to undertake rigorous training in order to obtain their job and on the other hand are subject to dismissal at the whim of their superiors.

This Court, in Board of *Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972), held that included within the definition of "liberty" is

> . . . the right of the individual to contact, to engage in any common occupation of life, to acquire useful knowledge, marry, establish a home or bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those provileges long recognized . . . as essential to the orderly pursuit of happiness by free men. *Id*, at 572.

In the instant case, the Peitioners were police officers who were required by Missouri state law to acquire certain training before they could be hired in St. Louis County as police officers. The requirements of the statute were mandatory, and the Petitioners complied with those requirements by gradu-

ating from the St. Louis Metropolitan Police Academy, which entails sixteen (16) weeks of intensive training. *All* police officers within St. Louis County must meet the requirements of this statute. This requirement applies regardless of whether the officer is hired by the City of St. Louis, by St. Louis County, or by anyone of the over ninety (90) municipalities located within St. Louis County. This statute applies whether the officer is hired by a first-class city, third-class city, charter city, fourth-class city, or a village.

The inequality of Section 79.240 R.S.Mo. is that police officers within a fourth-class city located in St. Louis County can be dismissed, even after undergoing this training and properly performing their duties, at the will and whimsey of the politicians who sit on the board of aldermen for that city. As the Petitioners pointed out in their brief before the Supreme Court of Missouri, this statute deprives them of certain protections under the law that are granted to other police officers in the same classification as the Petitioners, namely police officers in a first class county with a charter form of government. Although the Petitioners are treated the same as any other fourth-class city officer in the State of Missouri, the class which controls in this case should be the class of officers in a first-class county with a charter form of government that are required to reach a certain minimum level of training by Section 66.250 R.S.Mo. This is the most appropriate classification, because it supercedes the training requirements of Chapter 79 of the State of Missouri Revised Statutes which require no formal training of police officers when they are hired in a fourth-class city. The Missouri legislature has determined that the decision of hiring a police officer in a fourth-class city located within such a county is too important to leave it up to the will and whimsey of local politicians, and therefore, the Missouri legislatiure has displaced Chapter 79 with Section

66.250 imposing rigorous training requirements on all officers within a first-class county with a charter form of government. Unfortunately, the law protecting the police officer's job, his rank, and his paycheck has not kept pace with the law setting out the requirements for his training. The state legislature has not changed the dismissal requirements of Chapter 79 and permits the dismissal without cause and without a hearing of such police officers, despite the fact that these police officers have had to comply with the training requirements of Section 66.250 R.S.Mo.

The Supreme Court of the United States of America has held that the Equal Protection Clause of the Fourteenth Amendment is violated if a classification created by law rests on the grounds that are wholly irrelevant to the achievement of some state objective. *Avery v. Midland County, Tex.* 390 U.S. 474, 88 S.Ct. 1114 (1968) (holding that the Equal Protection Clause reaches the exercise of the state power, however manifested, whether exercised directly or through the subdivisions of the State); *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562 (1976) (holding that a mandatory retirement age of 50 years applied uniformly to all state police officers had a rationale basis because it maintained a healthy and vigorous police force); *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322 (1969) (holding that a one-year residency requirement before being eligible for welfare benefits was not related to a valid state purpose, because residency had nothing to do with need). In this case, the classification which has been created by law is the classification which denies fourth-class city police officers the procedural protections of a pre-termination hearing. These procedural protections are granted to other police officers located in St. Louis County and the City of St. Louis. It is clear that the Petitioners, as officers in a fourth-class city, do not receive the same protections as other

officers because of the broad powers to dismiss granted by Section 79.240 R.S.Mo. to the mayor and members of the board of aldermen of a fourth-class city. As the Petitioners stated in their brief before the Missouri Supreme Court, they are not aware of any grounds which justify the exclusion of fourth-class city police officers from the protections granted to other police officers. The only possible explanation for this exclusion is that the legislature in Missouri has gone about rewriting the statutes regarding municipal corporations in a piecemeal fashion, and there simply has been no legislation passed by the legislature to secure for fourth-class city officers the same protections which have been granted by law to other officers located within St. Louis County.

Petitioners also pointed out in their brief to the Missouri Supreme Court that this classification is clearly arbitrary and unreasonable. To require vigorous training or eight years experience of a police officer, while at the same time not affording him the minimal protections of an appeal hearing is an arbitrary and unreasonable distinction between members of a class within the same training statute and within the same geographical location. A mere political line between a fourth-class city and another type of city determines if a police officer get a hearing or is dismissed on the whim of the mayor and the board.

Finally, Petitioners argue that there is no reasonable relationship betwen the classification and the purpose of the legislation. The legislative intent behind Section 79.240 is not clear. The most recent revision of the statute occurred in 1895, and it is most likely that "home rule" was the purpose behind the statute. The legislature has since changed the hiring aspect of the law with the passage of Section 66.250 R.S.Mo. No longer can the mayor and the board just appoint anyone as a police officer; he must be qualified under the state law. Since

the legislature has determined that the qualifications for police officers in St. Louis County is too important a matter to be left up to local officials, the converse should be the same, and the conclusion must be that there is no longer a reasonable or rational basis for allowing local officials to dismiss an officer who is otherwise qualified because of a whim or because of a politically motivated reason which is not related to the officers' job performance.

CONCLUSION

WHEREFORE, the Petitioners pray the Court to enter their order granting a writ of certiorari in the above cause.

Respectfully submitted,

DAVID M. JOHNSON MBE #25255
TIMOTHY M GARDNER
Attorneys for Petitioners

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Clayton, MO 63105
(314) 863-8833

APPENDIX A

IN THE

CIRCUIT COURT

County of St. Louis, Missouri

Robert Amaan, et al

vs.

Number 415810

The City of Eureka, et al

June 30, 1981

Division 4

Mandate of the Supreme Court of Missouri received. Pursuant to this, Judgment of the Circuit Court, Division Number four, in the above entitled cause is reversed and judgment is entered in favor of the City of Eureka. Costs assessed against Plaintiffs.

cc: David M. Johnson
Attorneys for Plaintiffs

Richard Bumb
Attorney for Defendants

SO ORDERED

HERBERT LASKY, Judge

APPENDIX B

SUPREME COURT OF MISSOURI

en banc

No. 61336

ROBERT AMAAN AND NELSON MOSES,

Respondents,

vs.

THE CITY OF EUREKA, A MUNICIPAL CORPORATION, WILLIAM F. WEBER, et al.,

Appellants.

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY

Honorable Herbert Lasky, Judge

The issue on this appeal is whether §79.240, RSMo 1978,[1] which authorizes the mayor of a city of the fourth class, with the conesent of the majority of the board of aldermen, to remove at will an appointive officer of the city violates the constitutional rights of respondents contrary to the provisions of the equal protection clause of the fourteenth amendment of U. S. Constitution, and Mo.Const. art. 1, § 2, where, as here, respondents-policemen were dismissed from their employment in accordance with § 79.240.

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[1]". . . The mayor, with the consent of a majority of all the members elected to the board of aldermen, remove from office any appointive officer of the city at will, and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the board of aldermen, independently of the mayor's approval or recommendation. The board of aldermen may pass ordinances regulating the manner of impeachments and removals."

The circuit court held § 79.240 denied respondents procedural protection granted to other police officers employed by the various municipalities in St. Louis County and by St. Louis County, a first-class county with a character form of government, and in so doing denied respondents equal protection of the law. The circuit court thereupon enjoined appellant city of Eureka from proceeding under § 79.240 and ordered that respondents be afforded an appeal hearing on any disciplinary or dismissal action. From this judgment, appellants, city of Eureka and the named mayor and members of the board of aldermen, (hereafter City) appealed. Jurisdiction is in this Court. Art. 5, § 3, Constitution of Missouri.

The facts are stipulated. Respondents Amaan and Moses were employed as police officers by the city of Eureka, a city of the fourth class located in St. Louis County. Respondents complied with § 66.250, RSMo 1978, which requires persons serving as police officers in any police department located in any county of the first class having a charter form of government to satisfy certain training and educational requirements in order to be employed as a police officer. Respondents were employed by the mayor with the consent and approval of a majority of the board of aldermen as full-time police officers in accordance with § 79.230, RSMo 1978. On October 17, 1978, respondents were dismissed without cause from their positions as police officers by the mayor of Eureka, acting with the approval of a majority of the board of aldermen. This dismissal was communicated by a letter

to each respondent.[2] The respondents requested a hearing on their "grievance" of having been dismissed from their regular employment and the request for a hearing was denied by the city. There is no contention that the basis of layoff as stated in the dismissal letter was false. Under the stipulation the reason given is accepted as true.

---

[2]"Dear Mr. Amann [Amaan]:

As mayor of the City of Eureka and in occurrence with the Board of Aldermen, I wish to inform you that you are hereby laid off for an undetermined period of time.

The desire of the City is to cut costs during the winter months.

Sincerely,
William F. Weber /s/

Wm. F. Weber
Mayor"

(Respondent Frederick Nelson Moses was dismissed with an identical letter.)

Full-time commissioned police officers in first-class cities (§ 85.080, RSMo 1978) and third-class cities which have adopted a merit system police departmennt (§ 85.541) and police officers of the St. Louis County Police Department (§ 4.280, St. Louis County charter) are entitled to a hearing when they are disciplined or dismissed.

Third-class cities which do not adopt a merit system police department, and fourth-class cities, and towns and villages are authorized by statute to dismiss appointed officers without a hearing – at will.[3]

In Missouri the rule is well established "that in the absence of a contract for employment for a definite term or a contrary statutory provision, an employer may discharge an employee at any time, without cause or reason, or for any reason and, in such cases no action can be obtained for wrongful discharge." Christy v. Petrus, 293 S.W.2d 122, 124 (Mo. banc 1956); Cooper v. City of Creve Coeur, 556 S.W.2d 717, 720 (Mo. App. 1977).

There is no claim that appellants were motivated by any desire to curtail or penalize the exercise of respondents' constitutionally protected rights. In the instant case the reason for respondents being "laid off" related to municipal finances

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[3]Third-class cities see § 77.340. Fourth-class cities see § 79.240. Cooper v. City of Creve Coeur, 556 S.W.2d 717 (Mo. App. 1977) – a police officer. State ex rel. Kendall v. Wilson, 132 S.W.2d 623 (Mo. App. 1910) – an appointed city treasurer; Russell v. City of Raytown, 544 S.W.2d 48 (Mo. App. 1976) – an appointed city attorney; Loman v. Tharp, 542 S.W.2d 306 (Mo. App. 1976) – an appointed city marshal; Towns and Villages, § 80.240; 80-420; Harzin v. Collett, 562 S.W.2d 397 (Mo. App. 1978) – police officer.

and not to the quality of respondents' work. Nor do respondents direct the court to any law, ordinance, or agreement under which respondents claim any right to continued employment.

There is no claim or evidence that respondents were laid off for any constitutionally impermissible reason. See Branti v. Finkel – U.S. – No. 78-1654, March 31, 1980; Perry v. Sindermann, 408 U.S. 593 (1972) Board of Regents of State Colleges v. Roth, 408 U.S. 571 (1972). Nor was there any basis for a "name clearing" hearing as there were no false or defammatory public statements made reference the layoff of respondents. Board of Regents v. Roth, supra; Owen v. City of Independence, .. U.S. .. April 10, 1980.

In these circumstances the respondents' discharge did not deprive them of any property interest protected by the fourtenth amendment nor did the failure to afford respondents hearing constitute a deprivation of due process rights under the same amendment. Bishop v. Wood, 426 U.S. 341 (1976).

Respondents acknowledge the holdings of Bishop v. Wood, supra; Russell v. City of Raytown, supra, and Cooper v. City of Creve Coeur, supra, are against them on the due process violation claim. However, they seek to avoid those holdings by contending that § 79.240 violates their rights to equal protection under the fourteenth amendment of the U.S. Constitution and Mo.Const. art I, § 2. As noted supra, § 79.240 is the statute which permits the discharge of appointed officers or employees of a fourth-class city to be effected without a hearing as to the reason for discharge.

Respondent's equal protection claim is premised on § 66.250 which requires persons employed as police officers in any police department [city of Eureka] within first-class counties having a charter form of government [St. Louis County and

Jackson County] after September 28, 1971, to have received certain training. Persons employed as policemen in any other class county are not required to comply with § 66.250. Respondents argue that, because § 66.250 imposes training requirements only as to officers in first-class counties having a charter form of government, the officers within that class of county constitute a class separate from police officers employed by fourth-class cities in other counties and are entitled to the same protection against dismissal as is afforded officers of certain statutory classes of cities in Missouri and in St. Louis County. In short, respondents argue that because they are required by law (§ 66.250) to undergo certain training as a result of their employment as policemen by a St. Louis County municipality they are entitled to a pre-discharge hearing.

It is argued that all police officers in fourth-class cities receive the same treatment under Chapter 70 throughout the state. The requirement that officers employed within first-class counties must undergo certain training does not nullify the laws relative to the employment and discharge of officers in fourth-class cities simply because the city happens to be in a first-class county. *A fortiori* – if the General Assembly repeals § 66.250 then police officers in fourth-class cities in St. Louis County would not be entitled to a discharge hearing. There is no significant relationship between the powers of a fourth-class city statewide and the qualifications for police officer service within St. Louis County. To sustain respondents' position would create inequality as between the class of municipalities designated fourth-class cities and their employees throughout the state.

Additionally there is no case or authority cited supporting a requirement for a hearing where the reason for layoff is lack of funds and the reason is accepted as true. In either event, there is no equal protection violation here.

The judgment of the circuit court is reversed and the cause remanded with directions to enter judgment for appellant city or Eureka.

John E. Bardgett, Chief Justice

ALL CONCUR

APPENDIX C

CLERK OF THE SUPREME COURT

STATE OF MISSOURI

Post Office Box 150
Jefferson City, Missouri 65102

Thomas F. Simon, Clerk
June 8, 1981

Mr. David M. Johnson

225 Meramec
Suite 528T
Clayton, Missouri 63105

In re: Robert Amaan, et al. vs. The City of Eureka, a municipal corp., et al.
Supreme Court No. 61336

Dear Mr. Johnson:

This is to advise that the Court this day entered the following order in the above entitled cause:

"Respondents' motion for rehearing overruled."

Very truly yours,

Thomas F. Simon /s/

Clerk.

cc: Mr. Richard Bumb

Amicus Brief

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CLERK

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Respondents.

AMICUS CURIAE BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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QUESTIONS PRESENTED FOR REVIEW

1. Does Section 66.250 of the Revised Statutes of Missouri establishing state qualifications for police employment in first-class counties create a vested right to that employment which would require a pre-termination hearing with a dismissal for cause before such a vested right could be extinguished?

2. If Section 66.250 of the Revised Statutes of Missouri establishing state qualifications for police employment creates a vested right to that employment, then does Section 79.240 of the Revised Statutes of Missouri extinguish such a vested right by not providing Missouri police officers, in fourth-class cities having a charter government, with a pre-termination hearing with dismissal for cause in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution?

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Petitioners,

v.

THE CITY OF EUREKA, MISSOURI, and WILLIAM WEBER, MAYOR OF THE CITY OF EUREKA, and FRED SMITH, JOAN ROMERO, THURMAN DEAN, GORDON NIEHOFF, EDWARD RANKIN, and KENNETH KLINE, MEMBERS OF THE BOARD OF ALDERMEN OF THE CITY OF EUREKA, MISSOURI,

Respondents.

AMICUS CURIAE BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

The petitioner, the Fraternal Order of Police, consisting of approximately 150,000 police officers, is filing its *amicus curiae* brief on the petition for writ of certiorari of Robert Amaan and Nelson Moses and respectfully prays that a writ of certiorari issue to review the decision of the Missouri Supreme Court filed on April 6, 1981, and reported at 615 S.W. 2nd 414 (Mo. 1981).

In its *amicus curiae* brief, the petitioner, the Fraternal Order of Police, has considered the concept of a vested right relating to police employment and its relationship to Missouri statutes in terms of such a vested right indeed existing and if its existence can be extinguished by not providing for a pre-termination hearing with dismissal for cause without violating the equal protection clause of the fourteenth amendment of the United States Constitution.

OPINIONS BELOW

The order of the Circuit Court of St. Louis County, Missouri, Division 4, granting the petition for declaratory judgment and injunction of the petitioners herein, dated March 9, 1979 is printed as Appendix A and is not officially reported. The opinion of the Supreme Court of the State of Missouri, reversing the order of the trial court, dated April 6, 1981 is printed as Appendix B and is reported at 615 S.W.2d 414 (Mo. 1981). The order denying the motion for rehearing by the Supreme Court of the State of Missouri, dated June 8, 1981, is printed as Appendix C and is reported at 615 S.W.2d 414 (Mo. 1981).

JURISDICTION

The jurisdiction of this Court is invoked to review the judgment of the Missouri Supreme Court in *Amaan v. City of Eureka, supra*, entered on April 6, 1981; rehearing denied June 8, 1981. A Petition for Writ of Certiorari is being sought pursuant to 28 U.S.C. 1157(2) which permits review of judgments from a state supreme court in a civil case involving the constitutionality of a statute.

The Petition for Writ of Certiorari, was filed within 90 days after the denial of the petition for rehearing on June 8, 1981.

The petitioner herein has filed a timely *amicus curiae* brief pursuant to rule 36 of the rules of the Supreme Court of the United States.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES INVOLVED

Section 79.240 of the Revised Statutes of Missouri which reads in pertinent part as follows:

> ". . . the mayor may, with the consent of a majority of all the members elected the board of aldermen, remove from office any appointive officer of the city at will, and any such appointive officer may be so removed by a two-thirds vote of all the members elected the board of aldermen, independently of the mayor's approval or recommendation. The board of aldermen may pass ordinances regulating the manner of impeachments and removals."

and also Section 66.250 of the Revised Statutes of Missouri which reads in pertinent part as follows:

> "Any person appointed after September 28, 1971, to serve as a police officer in any police department in any county of the first class having a charter form of government shall, if he has not heretofore completed the training required by this subsection, within six months from the date of the appointment, cause to be filed with the prosecuting attorney of the county proof that he has satisfactorily completed a law enforcement officer training course conducted by the Federal Bureau of Investigation National Academy or the Southern Police Institute of Louisville, Kentucky, or a training course with a minimum of six hundred hours of instruction conducted by the county police department alone or in cooperation with any municipal police department authorized by law to operate police training courses, the state highway patrol, or any accredited course for police officers approved by such county police department; provided that any person who has successfully completed a basic police recruit training course conducted by the St. Louis County and Munici-

pal Police Training Academy, the City of St. Louis Police Academy or the Kansas City Police Academy, or who has eight continuous years of service and experience as a full-time police officer, shall have fulfilled the requirements of this law."

STATEMENT OF THE CASE

On October 17, 1978, the Petitioners were dismissed from their jobs as police officers by the Respondent City acting through its mayor and board of aldermen without cause and without a pre-termination hearing, pursuant to the statutory authority of Section 79.240 R.S.Mo.

In order to be hired as police officers by the Respondent City, the Petitioners were required to comply with Section 66.250 R.S.Mo. which requires that police officers within a first-class county with a charter form of government (specifically St. Louis County) have six hundred hours of accredited training or be a graduate of the St. Louis Metropolitan Police Academy or the St. Louis County and Municipal Police Training Academy or have eight continuous years of service as a full-time police officer.

Both Petitioners have complied with the requirements of Section 66.250 R.S.Mo. and were graduates of the St. Louis Metropolitan Police Academy. Both Petitioners requested a hearing before their dismissal was final, and those requests were denied.

Following their dismissal, the Petitioners filed a petition in the Circuit Court of St. Louis County on the 13th day of November, 1978, being Cause Number 415810,

wherein Robert Amaan and Nelson Moses were plaintiffs and the City of Eureka, William F. Weber, Fred Smith, Joan Romero, Thurman Dean, Gordon Niehoff, Edward Rankin, and Kenneth Kline were defendants. The petition was in two counts and requested in Count I that the Court examine Section 79.240 of the Revised Statutes of Missouri and declare the statute unconstitutional because it denied the plaintiffs the equal protection of the law, because it did not afford them a pre-termination hearing.

Pre-termination hearings are mandated by law for other police officers in St. Louis County if they are employed by the City of St. Louis, the County of St. Louis, a third-class city, or a city with a charter form of government. Only police officers employed in a fourth-class city or a village may be dismissed at will without a hearing.

In Count II, Petitioners requested that the Court enjoin the defendants from enforcing their decisions to dismiss the plaintiffs.

An Order to Show Cause was issued by Judge Herbert Lasky of the St. Louis County Circuit Court on the 13th day of November, 1978. The case was heard on a stipulated set of facts and upon memoranda filed by the respective counsel.

On March 9, 1979, the trial court issued its determination in this matter and entered judgment in favor of the plaintiffs, Petitioners herein, by finding that Section 79.240 of the Revised Statutes of the State of Missouri unreasonably and arbitrarily denied plaintiffs, Petitioners herein, the procedural protection granted to other police officers in St. Louis County and therefore denied them equal judgment that the enforcement of the statute in question, Section 79.240 would be permanently en-

joined, and the plaintiffs, Petitioners herein, must be afforded an appeal hearing on any disciplinary or dismissal action.

On April 2, 1979, a notice of appeal was filed by the defendants, Respondents herein. The appeal was taken directly to the Missouri Supreme Court due to the constitutional question presented, and that Court took briefs and held oral argument and issued its judgment on April 6, 1981. That decision reversed the decision of the trial court in all respects.

The Missouri Supreme Court held that:

> In Missouri the rule is well established 'that in the absence of a contract for employment for a definite term or a contrary statutory provision, an employer may discharge an employee at any time, without cause or reason, or for any reason, and in such cases no action can be obtained for wrongful discharge.' *Christy v. Petrus*, 295 S.D.2d 122, 124 (Mo. banc 1956); *Cooper v. City of Creve Coeur*, 557 S.W.2d 717, 720 (Mo. App. 1977), *Amaan, supra* at 415.

In reaching its decision on the claim that Section 79.240 violates the equal protection clause, the Court stated at 416:

> Respondents' equal protection claim is premised on §66.250 which requires persons employed as police officers in any police department (city of Eureka) within first-class counties having a charter form of government (St. Louis County and Jackson County) after September 28, 1971, to have received certain training. Persons employed as policemen in any other class county are not required to comply with §66.250. Respondents argue that, because §66.250 imposes training requirements only as to officers in first-class counties having a charter form of government, the officers within that class of county constitute a class separate from police officers employed

by fourth-class cities in other counties and are entitled to the same protection against dismissal as is afforded officers of certain statutory classes of cities in Missouri and in St. Louis County. In short, respondents argue that because they are required by law (§66.250) to undergo certain training as a result of their employment as policemen by a St. Louis County municipality they are entitled to a pre-discharge hearing.

It is argued that all police officers in fourth-class cities receive the same treatment under Chapter 79 throughout the state. The requirement that officers employed within first-class counties must undergo certain training does not nullify the laws relative to the employment and discharge of officers in fourth-class cities simply because the city happens to be in a first-class county. A fortiori, if the General Assembly repeals §66.250 then police officers in fourth-class cities in St. Louis County would not be entitled to a discharge hearing. There is no significant relationship between the powers of a fourth-class city state-wide and the qualifications for police officer service within St. Louis County. To sustain respondents' position would create inequality as between the class of municipalities designated fourth-class cities and their employees throughout the state.

Additionally there is no case or authority cited supporting a requirement for a hearing where the reason for layoff is lack of funds and the reason is accepted as true. In either event, there is no equal protection violation here.

On April 15, 1981, counsel for the petitioners filed a timely motion for rehearing before the Missouri Supreme Court and suggestions in support of that motion. The motion for rehearing was requested due to material mistakes of fact which were contained in the Court's opinion regarding the reason for the dismissal of the plaintiffs, and further, because the Court had misinter-

preted a material matter of law as to the question of equal protection. The Missouri Supreme Court erroneously held that the stipulation of facts in this case accepted as true the reason given to petitioners for their termination (financial cutbacks). The stipulation of record simply stated

> "On October 17, 1978, the plaintiffs Petitioners herein were dismissed by the defendant Mayor and Board of Aldermen without cause pursuant to §79.240 R.S.Mo." (Trial Record 12)

Petitioners urged the Court to correct its erroneous statement of the facts. Further, the Court held that there was "no significant relationship between the powers of a fourth-class city statewide and the qualifications for police officers service within St. Louis County". *Amaan, supra* at 416. Petitioners urged the Court to reconsider this in light of the substantial burden placed on fourth-class city officers by the training statute.

On June 8, 1981, the Missouri Supreme Court denied the motion for rehearing without opinion.

ARGUMENT

The issues are whether:

1. Section 66.250 of the Revised Statutes of Missouri establishing state qualifications for police employment in first-class counties having a charter government creates a vested right to that employment which would require a pre-termination hearing with a dismissal for cause before such a vested right could be extinguished.

2. Section 79.240 of the Revised Statutes of Missouri, which does not provide for a pre-termination hearing with dismissal for cause for policemen in fourth-class cities, violates the equal protecton clause of the fourteenth amendment of United States Constitution.

Analyzing the issues as presented, the first consideration is whether Section 66.250 of the Missouri statutes creates a vested right to police employment which would require a pre-termination hearing with dismissal for cause before such a vested right could be extinguished.

In *Confederation of Police v. City of Chicago*, 547 F. 2d 375 (1975), the court held that vesting in terms of employment must be evidenced by affirmative recognition to this effect embodied in State law.

An example of such an affirmative recognition of employment entitlement resulting in a vested right is enunciated in *U.S. v. City of Chicago*, 549 F. 2d 415 (1977), wherein Justice Marshall states that state law creates vested rights as they relate to policemen's promotions on the basis of the following pertinent quotation from page 439 of that opinion:

> "Promotions within the Police Department, like appointments, are strictly governed by the Illinois

> Municipal Code. The Illinois legislature has limited promotions to any position covered by the Municipal Code to the top three candidates on the relevant eligibility roster."

Consequently affirmative recognition of employment entitlement occurs when state law so dictates.

In this instance, Section 66.250 of the Revised Statutes of Missouri has by affirmative recognition established state qualifications that must be met before a police appointment results.

As a consequence, when a police candidate fulfills those qualifications, he earns the legal right to be appointed; and when appointed, that earned legal right is vested.

The next consideration is whether the vested right to police employment can be extinguished without a hearing for cause.

In *Arnett v. Kennedy*, 416 U.S. 134, the court held that state law had provided for a pre-termination hearing with dismisal for cause; and therefore, a public employee could not be terminated from his employment without a pre-termination hearing with a dismissal for cause, since state law affirmatively recognized a due process requirement by providing a pre-termination hearing.

On the other hand, in *Bishop v. Wood*, 426 U.S. 341, the court dealt with a permanent employee dismissal without pre-termination hearing for cause.

Although, in *Bishop*, the employee's permanent status constituted a vested right to police employment suggesting a pre-termination hearing with dismissal for cause, nevertheless the court held that, since the ordinance in

question did not affirmatively recognize a pre-termination hearing with dismissal for cause, the police officer was not denied due process by being terminated without a hearing.

However, the *Bishop* court was not confronted with nor addressed the issue of whether the achievement of a vested right in police employment by meeting state qualification standards for such employment was protected by the equal protection clause of the fourteenth amendment of the United States Constitution.

Because Section 66.250 of the Revised Statutes of Missouri treats equally all Missouri police officers in terms of qualifying for police employment in counties classified first class, it does not treat them equally in relation to the extinguishing of their vested right to such employment, when in Section 79.240, it enables fourth-class communities located in first-class counties to extinguish a vested right to police employment without a pre-termination hearing with dismissal for cause.

It is the contention of the Fraternal Order of Police that such unequal treatment of Missouri police officers in the protection of their earned vested right to police employment is a violation of the equal protection clause of the fourteenth amendment of the United States Constitution.

CONCLUSION

WHEREFORE, petitioner, Fraternal Order of Police, prays that this court issue its writ of certiorari to the Supreme Court of the State of Missouri.

Respectfully submitted,

STANLEY H. JAKALA
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733

Attorney for Amicus Curiae
Fraternal Order of Police

November 4, 1981

APPENDIX A

IN THE

CIRCUIT COURT

County of St. Louis, Missouri

Robert Amaan, et al

vs.

Number 415810

The City of Eureka, et al

March 9, 1979

Division 4

JUDGMENT

On March 9, 1979, the following memorandum was filed:

"Judgment for Plaintiffs.

Section 79.240 of Missouri Revised Statutes unreasonably and arbitrarily denies the Petitioners the procedural protection granted to other police officers in St. Louis County and therefore denies them equal protection of the law. The enforcement of this statute is permanently enjoined and the Plaintiffs must be afforded an appeal hearing on any disciplinary or dismissal actions.

Costs against Defendants.

SO ORDERED

Herbert Lasky, Judge /s/"

Filed March 9, 1979.

IN THE

CIRCUIT COURT

County of St. Louis, Missouri

Robert Amaan, et al

vs.

Number 415810

The City of Eureka, et al

June 30, 1981

Division 4

Mandate of the Supreme Court of Missouri received. Pursuant to this, Judgment of the Circuit Court, Division Number four, in the above entitled cause is reversed and judgment is entered in favor of the City of Eureka. Costs assessed against Plaintiffs.

cc: David M. Johnson
Attorneys for Plaintiffs

Richard Bumb
Attorney for Defendants

SO ORDERED

HERBERT LASKY, Judge

APPENDIX B

SUPREME COURT OF MISSOURI

en banc

No. 61336

ROBERT AMAAN AND NELSON MOSES,

Respondents,

vs.

THE CITY OF EUREKA, A MUNICIPAL CORPORATION, WILLIAM F. WEBER, et al.,

Appellants.

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY

Honorable Herbert Lasky, Judge

The issue on this appeal is whether §79.240, RSMo 1978,[1] which authorizes the mayor of a city of the fourth class, with the consent of the majority of the board of aldermen, to remove at will an appointive officer of the city violates the constitutional rights of respondents contrary to the provisions of the equal protection clause of

[1] ". . . The mayor, with the consent of a majority of all the members elected to the board of aldermen, remove from office any appointive officer of the city at will, and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the board of aldermen, independently of the mayor's approval or recommendation. The board of aldermen may pass ordinances regulating the manner of impeachments and removals."

the fourteenth amendment of U. S. Constitution, and Mo.Const. art. 1, § 2, where, as here, respondents-policemen were dismissed from their employment in accordance with § 79.240.

The circuit court held § 79.240 denied respondents procedural protection granted to other police officers employed by the various municipalities in St. Louis County and by St. Louis County, a first-class county with a character form of government, and in so doing denied respondents equal protection of the law. The circuit court thereupon enjoined appellant city of Eureka from proceeding under § 79.240 and ordered that respondents be afforded an appeal hearing on any disciplinary or dismissal action. From this judgment, appellants, city of Eureka and the named mayor and members of the board of aldermen, (hereafter City) appealed. Jurisdiction is in this Court. Art. 5, § 3, Constitution of Missouri.

The facts are stipulated. Respondents Amaan and Moses were employed as police officers by the city of Eureka, a city of the fourth class located in St. Louis County. Respondents complied with § 66.250, RSMo 1978, which requires persons serving as police officers in any police department located in any county of the first class having a charter form of government to satisfy certain training and educational requirements in order to be employed as a police officer. Respondents were employed by the mayor with the consent and approval of a majority of the board of aldermen as full-time police officers in accordance with § 79.230, RSMo 1978. On October 17, 1978, respondents were dismissed without cause from their positions as police officers by the mayor of Eureka, acting with the approval of a majority of the board of aldermen. This dismissal was com-

municated by a letter to each respondent.[2] The respondents requested a hearing on their "grievance" of having been dismissed from their regular employment and the request for a hearing was denied by the city. There is no contention that the basis of layoff as stated in the dismissal letter was false. Under the stipulation the reason given is accepted as true.

Full-time commissioned police officers in first-class cities (§ 85.080, RSMo 1978) and third-class cities which have adopted a merit system police department (§ 85.541) and police officers of the St. Louis County Police Department (§ 4.280, St. Louis County charter) are entitled to a hearing when they are disciplined or dismissed.

Third-class cities which do not adopt a merit system police department, and fourth-class cities, and towns and villages are authorized by statute to dismiss appointed officers without a hearing—at will.[3]

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[2] "Dear Mr. Amann [Amaan]:

As mayor of the City of Eureka and in occurrence with the Board of Aldermen, I wish to inform you that you are hereby laid off for an undetermined period of time.

The desire of the City is to cut costs during the winter months.

Sincerely,
William F. Weber /s/
Wm. F. Weber
Mayor"

(Respondent Frederick Nelson Moses was dismissed with an identical letter.)

[3] Third-class cities see § 77.340. Fourth-class cities see § 79.240. Cooper v. City of Creve Coeur, 556 S.W.2d 717 (Mo. App. 1977)—a police officer. State ex rel. Kendall v. Wilson, 132 S.W.2d 623 (Mo. App. 1910)—an appointed city treasurer;

(Footnote continued on following page)

In Missouri the rule is well established "that in the absence of a contract for employment for a definite term or a contrary statutory provision, an employer may discharge an employee at any time, without cause or reason, or for any reason and, in such cases no action can be obtained for wrongful discharge." Christy v. Petrus, 295 S.W.2d 122, 124 (Mo. banc 1956); Cooper v. City of Creve Coeur, 556 S.W.2d 717, 720 (Mo. App. 1977).

There is no claim that appellants were motivated by any desire to curtail or penalize the exercise of respondents' constitutionally protected rights. In the instant case the reason for respondents being "laid off" related to municipal finances and not to the quality of respondents' work. Nor do respondents direct the court to any law, ordinance, or agreement under which respondents claim any right to continued employment.

There is no claim or evidence that respondents were laid off for any constitutionally impermissible reason. See Branti v. Finkel, ... U.S. ....., No. 78-1654, March 31, 1980; Perry v. Sindermann, 408 U.S. 593 (1972); Board of Regents of State Colleges v. Roth, 408 U.S. 571 (1972). Nor was there any basis for a "name clearing" hearing as there were no false or defammatory public statements made reference the layoff of respondents. Board of Regents v. Roth, supra; Owen v. City of Independence, ... U.S. ....., April 10, 1980.

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[3] *continued*

Russell v. City of Raytown, 544 S.W.2d 48 (Mo. App. 1976)—an appointed city attorney; Loman v. Tharp, 542 S.W.2d 306 (Mo. App. 1976)—an appointed city marshall; Towns and Villages, § 80.240; 80-420; Harzin v. Collett, 562 S.W.2d 397 (Mo. App. 1978)—police officer.

In these circumstances the respondents' discharge did not deprive them of any property interest protected by the fourteenth amendment nor did the failure to afford respondents a hearing constitute a deprivation of due process rights under the same amendment. Bishop v. Wood, 426 U.S. 341 (1976).

Respondents acknowledge the holdings of Bishop v. Wood, supra; Russell v. City of Raytown, supra, and Cooper v. City of Creve Coeur, supra, are against them on the due process violation claim. However, they seek to avoid those holdings by contending that § 79.240 violates their rights to equal protection under the fourteenth amendment of the U.S. Constitution and Mo.Const. art I, § 2. As noted supra, § 79.240 is the statute which permits the discharge of appointed officers or employees of a fourth-class city to be effected without a hearing as to the reason for discharge.

Respondents' equal protection claim is premised on § 66.250 which requires persons employed as police officers in any police department [city of Eureka] within first-class counties having a charter form of government [St. Louis County and Jackson County] after September 28, 1971, to have received certain training. Persons employed as policemen in any other class county are not required to comply with § 66.250. Respondents argue that, because § 66.250 imposes training requirements only as to officers in first-class counties having a charter form of government, the officers within that class of county constitute a class separate from police officers employed by fourth-class cities in other counties and are entitled to the same protection against dismissal as is afforded officers of certain statutory classes of cities in Missouri and in St. Louis County. In short, respondents argue that because they are required by law (§ 66.250)

to undergo certain training as a result of their employment as policemen by a St. Louis County municipality they are entitled to a pre-discharge hearing.

It is argued that all police officers in fourth-class cities receive the same treatment under Chapter 70 throughout the state. The requirement that officers employed within first-class counties must undergo certain training does not nullify the laws relative to the employment and discharge of officers in fourth-class cities simply because the city happens to be in a first-class county. *A fortiori*—if the General Assembly repeals § 66.250 then police officers in fourth-class cities in St. Louis County would not be entitled to a discharge hearing. There is no significant relationship between the powers of a fourth-class city statewide and the qualifications for police officer service within St. Louis County. To sustain respondents' position would create inequality as between the class of municipalities designated fourth-class cities and their employees throughout the state.

Additionally there is no case or authority cited supporting a requirement for a hearing where the reason for layoff is lack of funds and the reason is accepted as true. In either event, there is no equal protection violation here.

The judgment of the circuit court is reversed and the cause remanded with directions to enter judgment for appellant city of Eureka.

John E. Bardgett, Chief Justice

ALL CONCUR

APPENDIX C

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
Post Office Box 150
Jefferson City, Missouri 65102
Thomas F. Simon, Clerk

June 8, 1981

Mr. David M. Johnson

225 Meramec
Suite 528T
Clayton, Missouri 63105

In re: Robert Amaan, et al. vs. The City of Eureka, a municipal corp., et al.
Supreme Court No. 61336

Dear Mr. Johnson:

This is to advise you that the Court this day entered the following order in the above entitled cause:

"Respondents' motion for rehearing overruled."

Very truly yours,

Thomas F. Simon /s/
Clerk.

cc: Mr. Richard Bumb